In the High Court of Judicature at Madras

Dated:12.12.2002

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The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice A.K. RAJAN

Civil Miscellaneous Appeal No.1064 of 1996
and C.M.A.No. 507 of 1997
and
C.M.P.Nos.17947/96 & 3292/98

C.M.A.No.1064 of 1996:

New India Assurance Company Limited
Kancheepuram. .. Appellant

-Vs-

1. Anandalatchumi
2. Chandran
3. The Managing Director
Sakthi Beverages (P) Ltd.,
Coimbatore.
4. United India Insurance Company
Ltd., Office at Coimabtore. .. Respondents

C.M.A.No.507 of 1997:
1. The Managing Director
M/s. Sakthi Beverages (P) Ltd.,
Coimbtore - Now re-named as
M/s. A.B.T. Industries Ltd.,
Coimbatore.
2. M/s. United India Insurance
Company Ltd., Coimbatore. .. Appellants

vs.
1. Anandha Lakshmi
2. Chandran
3. M/s. New India Assurance Company
Ltd., Kancheepuram. .. Respondents

For appellant in CMA.No.1064 of 1996: Mr. S. Manohar

For appellants and 4th respondent in
CMA.Nos.1064/96 & 507/97 respectively: Mr. K.S. Narasimhan.

For respondents - claimants : Mr. A. Subramani.
..
Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 04.09.1995 made in M.A.C.T.O.P.No.109 of 1987 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) Tiruvellore.

:COMMON JUDGEMENT

(Judgment of the Court was made by P. SATHASIVAM,J.,)
Aggrieved by the award of the Motor Accident Claims Tribunal (Sub Court) Tiruvellore dated 04.09.1995 made in M.C.O.P.No.109 of 1987, New India Assurance Company Limited, Kancheepuram has preferred C.M.A. No.1064 of 1996 before this Court. Questioning the very same award, M/s. Sakthi Beverages Private Limited and United India Insurance Company, Coimbatore have preferred C.M.A.No.507 of 1997.

2. Since both the appeals arise from the very same award, they are being disposed of by the following common judgment.
3. In respect of death of one Ramesh Babu in a motor vehicle accident that was taken place on 18.04.1987, his mother Anandalatchumi filed a claim petition in M.C.O.P.No.109 of 1987 before the Motor Accident Claims Tribunal (Sub Court), Tiruvellore, claiming a compensation of Rs.4,50,000/-. Before the Tribunal, the claimant herself was examined as P.W.1 and one Sreekanth as P.W.2 and marked Exs.A.1 to A.7in support of her claim. On the side of the respondents, Insurance Policy has been marked as Ex.R.1 and no oral evidence was let in. The Tribunal, on appreciation of oral and documentary evidence, after holding that the accident was caused due to the negligence of both the vehicles, namely a private bus and a van, apportioned the liability to the extent of 60:40 between the bus and van and passed an award for Rs.3,39,500.00 with interest at the rate of 15% per annum from the date of petition till the date of deposit. Questioning the said award, both the Insurance Companies have filed the above appeals.

4. Heard the learned counsel for the appellants as well as respondents.

5. First, we shall consider CMA.No.1064 of 1996, wherein the New India Assurance Company challenges its liability. Mr. S. Manohar, learned counsel for the appellant after taking us through the copy of the Insurance Policy - Ex.R.1; Section 95 (2) (b) (i) of the Motor Vehicles Act, 1939 would contend that in the absence of proof for payment of additional premium for increased third party limit, they are liable to pay only the statutory liability of Rs.50,000/- and according to him the direction of the Tribunal fastening the entire liability on the Insurance Company cannot be sustained. In support of the above contention, he brought to our notice the specific reference in the counter statement, namely limited liability to the extent of Rs.50,000/- and Ex.R.1 - copy of Insurance Policy dated 18.12.1986.

6. It is the case of the claimant that her son deceased Ramesh Babu on 18.04.1987, while travelling in a van (rpw;We;J) TCG 4393 along

with others, a private bus TNJ 7171 dashed against each other, thereby the deceased sustained fatal injuries. Fourth respondent before the Tribunal - second appellant in CMA.No.507 of 1997, filed a counter statement disputing the statement made by the claimant. On appreciation of the evidence let in - oral and documentary, the Tribunal arrived a conclusion that both the drivers were equally responsible and apportioned their liability by 60:40, i.e., 60% in favour of the bus driver and 40% in favour of the van driver.

7. Now, we shall consider the limited liability as pleaded by the appellant in CMA.No.1064 of 1996. We have already referred to their defence taken in the counter statement. A copy of the insurance policy dated 18.12.1986 taken by V. Chandran, first respondent before the Tribunal (owner of the private bus) has been marked as Ex.R.1. The following details mentioned therein are relevant.

" Limits of liability:

(a) Limit of the amount of the Company's liability under Section III (1) in respect of any one accident:
Such amount as is necessary to meet the requirements of the Motor Vehicles Act, 1939.

(b) Limits of the amount of the Company's liability under Section II-I (ii) in respect of any one claim or series of claims arising out of one event:
Rs.50,000. "

Insured's Non-electrical Electrical & Total
Estimated value Accessories Electronic I.E.V.
Of vehicle Accessories

Rs. PR Rs. Rs. Rs. PR only

SCHEDULE OF PREMIUM

B. LIABILITY TO PUBLIC RISK
Add: for L.L. To passengers.
As per END IMT.13
Limit per passenger Rs.51 x 12
(Maximum Rs. As per M.V. Act 1939

Add for L.L. To paid driver and / or
Cleaner as per END IMT.16
Add for increased T.P. Limits
Section II 1 (i) Unlimited
Section II 1 (ii) Rs. .....

Add for .....

COMPREHENSIVE PREMIUM (A+B)

Less: 10% Sp.Discount (if due)

Rs.

Rs.

Rs.

Rs.

240.00

612.00

16.00

868.00

NET PREMIUM DUE (ROUNDED OFF)
Rs.
868.00

SECTION II - LIABILITY TO THIRD PARTIES
"1. Subject to the Limits of Liability the Company will indemnify the insured against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of
(i) death of or bodily injury to any person caused by or arising out of the use (including the loading and / or unloading) of the Motor Vehicle.
(ii) damage to property caused by the use (including the loading and / or unloading) of the Motor Vehicle. "

8. By drawing our attention to " Schedule of Premium ", learned counsel for the Insurance Company would contend that inasmuch as the owner has paid only Rs.240/- and no additional premium paid for increased third party liability, in view of the limit of liability mentioned in Ex.R.1, they are liable to pay only the statutory liability of Rs.50,000.00. He also

explained that payment of Rs.240/- is in respect of one accident, i.e., in respect injur y or death and damage to the property. A perusal of Schedule of Premium shows that the owner has not paid additional amount to cover the unlimited liability to third parties.(Emphasis supplied) In such a circumstance, as per Section 95 (2) (b) (i) of the Motor Vehicles Act, 1939, as it stood on the date of the accident, i.e., on 18.04.1987, the liability of an insured in respect of third parties was limited to Rs.50,000.00. The contrary view expressed by the Tribunal cannot be accepted. Learned counsel for the Insurance Company has also brought to our notice the recent Constitution Bench decision of the Supreme Court in the case of New India Assurance Co., Ltd., vs. C.M. Jaya & Others reported in 2002 (1) Supreme 170, wherein their Lordships, after considering the liability of the Insurance Company under Section 95 (2) of the Motor Vehicles Act, 1939 and the earlier decisions on the point in controversy has concluded,

" 11. In the premise, we hold that the view expressed by the bench of three learned Judges in the case of Shanti Bai is correct and answer the question set out in the order of reference in the beginning as under:-
In the case of insurance company not taking any higher liability by accepting a higher premium for payment of compensation to a third party, the insurer would be liable to the extent limited under Section 95(2) of the Act and would not be liable to pay the entire amount. "
After arriving such conclusion and in the light of the fact that no additional or higher premium was paid to the unlimited or uncovered liability than the statutory liability fixed, their Lordships have concluded that the liability of the appellant / Insurance company is limited to Rs.50,000/- and modified the order of the High Court to that extent. In the light of the materials placed, particularly Policy of Insurance - Ex.R.1 and the details furnished therein, we are of the view that the above cited judgment is squarely apply to the facts of this case and we hold that the liability of the appellant - New India Assurance Company, Kancheepuram is limited to Rs.50,000.00 and the balance amount shall be paid by the owner of the bus.

9. Now, we shall consider the quantum of compensation determined by the Tribunal. Since the other appeal, namely CMA.No.507 of 1997 is by the insured and the insurer of the vehicle, we inclined to consider the quantum of compensation determined by the Tribunal. As per the evidence of P.W.1, mother of the deceased that at the time of accident, her son Ramesh Babu was an Engineering graduate. Ex.P.5 is a Provisional Certificate, which proves the same. The Post mortem certificate Ex.P.3 shows that he was aged about 23 years on the date of accident. Though the Tribunal has adopted and followed the old method, namely "longevity theory" and deducted a portion from and out of the total amount towards lump sum payment and uncertainty of life, we are not inclined to follow the said method. There is ample evidence to show that the deceased was a B.E., graduate and aged about 22 years and the claimant is the mother of the deceased. In such a circumstance, even if we take that he would earn atleast Rs.2,000/- per month, undoubtedly, he would contribute Rs.1,400/- per month to his mother. Considering the fact that the claimant - mother was 41 years on the date of accident and if we consider the same, the proper multiplier as per the II Schedule to the Motor Vehicles Act, 1988 is 15 and by applying the same, we fix Rs.2,52,000/- towards pecuniary

loss.

10. The Tribunal has granted Rs.1 lakh towards loss of estate, which is on the higher side and the same cannot be accepted. We are of the view that a sum of Rs.20,000/- towards loss of estate would be proper and adequate. Considering the fact that the claimant - mother lost her son at the age of 22, we grant a sum of Rs.20,000/- for loss of love and affection and Rs.3,000/- towards funeral expense. In this way, we fix the total compensation payable to the claimant is at Rs.2,95,000/-.

11. As far as the liability as apportioned by the Tribunal, the United India Insurance Company - appellant in CMA.No.507 of 1997 has to deposit 40%, namely Rs.1,18,000/- and New India Assurance Company - appellant in CMA.No.1064 of 1996 has to deposit Rs.1,77,000/-. However, in view of our conclusion that the liability of the appellant in CMA.No.1064 of 1996 is restricted to Rs.50,000/-, we hold that they are (New India Assurance Company) liable to deposit Rs.50,000/- with interest thereon. The owner of the private bus, namely V. Chandran is liable to pay the balance amount of Rs.1,27,000/- with interest thereon.

12. The Tribunal has granted interest for the award amount at the rate of 15% per annum from the date of petition till the date of deposit. Though as per the recent judgment of the Supreme Court in the case of Kaushnuma Begum and others vs. The New India Assurance Company Ltd., reported in 2001 (1) Supreme Page 5 and United India Insurance Company Limited and others vs. Patricia Jean Mahajan and others reported in 2002 (6) S.C.C. 289, proper rate of interest is 9% per annum, inasmuch as the accident had occurred on 18.04.1987, we inclined to grant interest at the rate of 12% per annum for the modified award amount.

In the light of what is stated above, both the appeals are allowed and the award of the Tribunal is modified to the extent mentioned above. No costs. Consequently, connected CMPs., are closed.

Index:Yes
Internet:Yes
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To
1. The Subordinate Judge (MACT)
Tiruvellore (with records)

2. The S.O., V.R. Section, High Court, Madras.